

IN THE CIRCUIT COURT 'B' KOFORIDUA IN THE EASTERN REGION OF THE
REPUBLIC OF GHANA HELD ON MONDAY THE 11TH DAY OF MARCH 2024 BEFORE
HER HONOUR MRS. MATILDA RIBEIRO, CIRCUIT COURT
JUDGE

CC No. B7/49/2022

THE REPUBLIC

Versus.

ISSAH HAMED

JUDGMENT

This case is for sentencing today but before that, I would like to give a brief background to the case. The accused person was arraigned before this court on two (2) counts of defrauding by false pretence contrary to section 131 of the Criminal Offences Act 1960 (Act 29) and stealing contrary to section 124 of Act 29.

The accused person was said to have defrauded one Felicia Korankye of the sum of GHC77,000.00 by falsely pretending to her that if the said amount is given to him, he could secure a five-bedroom house for her knowing very well that the statement made by him at the time was not true. He was further alleged to have stolen 26 bags containing personal effects valued at GHC78,128.69, 70 boxes containing personal effects valued at GHC210,346.46, ten gold watches for women valued at GHC 30,049.49, ten gold watches for men valued at GHC30,049.49, 75 inches Samsung TV valued at GHC 12,019.80, one big mattress valued at GHC3,004.95, five standing fans valued at GHC1,502.47, one room carpet valued at GHC1,201.98, silver sets valued at GHC4,807.92, two ice chests valued at GHC1,201.98, three-in-one stuffing chair valued at GHC6,009.90 and a number of rice bags, corned beef among others contained in three drums valued at GHC1,201.98, totaling

GHC379,525.12 all properties of one Felicia Korankye on or about 1st December 2021. These items were allegedly sent to the accused person by Felicia Korankye, a sister to Hilda Korankye the complainant to keep in a house the accused person was supposed to rent for her.

On the 9th of March 2022 The accused person pleaded guilty with explanation to Count one and not guilty to count two. He was subsequently found guilty and convicted by this Court differently constituted as the court found his explanation to be an admission of the offence charged (Count one). His sentence was however deferred, and the matter adjourned for case management conference in respect of count two.

Hearing on count 2 started on the 28th March 2023. It was at the point where the accused person was cross examining the investigator of the case (PW3) that the sitting judge at the time was elevated and so the case stalled for some time. An order was then made for the record of proceedings in respect of Count 2 to be typed for consideration and adoption by the Court. It was not until 3rd November 2023 that accused person was sentenced on the count one, he had previously been convicted of. Making way now for the newly constituted court to hear and determine Count 2. The Court then adopted the typed record of proceedings after having reviewed same with both parties and adjourned the case to 22nd February 2024 for further cross examination of PW3 by the accused person.

On the return date after the court room had been cleared ready for the days business, the accused person informed the court of his decision to change his plea from not guilty to count two to guilty in order not to waste the Court's time. Surprised by the turn of events, the court enquired from the accused person what informed this decision of his and whether it was voluntary or influenced by someone to plead guilty because of a promise of some benefit or reward. Accused person in all instances maintained that it was his own voluntary decision to change his plea to guilty. The court then explained to him the nature of the

offence of stealing and the consequences or the implications if his guilty plea was accepted by the Court and asked whether he would want to change his plea. Accused person maintained that he was guilty and did not intend to change that. The Court being satisfied that the decision by the accused person to plead guilty to the charge of stealing was voluntary and that he also understood the nature of the offence and the consequences that follow if his guilty plea is accepted by the court, accepted accused persons plea of guilty to the charge of stealing and convicted him of same (See section 199 of the Criminal and Other Offences Procedure Act 1960 (Act 30)).

During the presentence hearing, accused person pleaded with the Court to deal with him leniently because he has young children whose education is being affected as a result of his incarceration. He therefore pleaded with the court to have mercy on him so that he can go and take care of his children. He promised never to put up such a behaviour again. Prosecution on its part urged the court to pass a severe sentence to serve as a deterrence given the circumstances of the case, that it was premeditated, and that the accused person has already been convicted and sentenced to five years on the charge of defrauding. Prosecution submitted further that stealing is a serious offence and on a high ascendency in the society among the youth of which the accused person is one of them. That looking at the circumstances in which he stole the items brought in by Felicia Korankye who trusted accused person so much and entrusted the items to him for safe keeping but accused person denied the owner of its use, he should be severely punished to serve as a deterrence to him and other young men.

The question is, what is the appropriate sentence to pass in respect of Count 2 (Stealing) considering the circumstances of this case?

The principles or factors to be considered in passing a sentence have been stated in the locus classicus case of *Kwashie v The Republic* [1971] 1 GLR 488 at 493 where it was stated thus: -

"In determining the length of sentence, the factors which the trial Judge is entitled to consider are:

- i. The intrinsic seriousness of the offence.*
- ii. The degree of revulsion felt by law abiding citizens of the society for the particular crime.*
- iii. The premeditation with which the criminal plan was executed.*
- iv. The prevalence of the crime within the particular locality where the offence took place, or in the country generally.*
- v. the sudden increase in the incidents of the particular crime*
- vi. Mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."*

Then in ***The Republic v Adu-Boahen, [1972] GLR 70-78*** the court stated thus:

"Where the court finds an offence to be grave, it must not only impose a punitive sentence, but also a deterrent or exemplary one so as to indicate the disapproval of society of that offence once the court decides to impose a deterrent sentence the good record of the accused is irrelevant." (Emphasis supplied).

Also, in the case of **Isaac Amaniampong @ Fiifi v. The Republic (28th May 2014)**

The Supreme Court speaking through Owusu (Ms.) JSC, stated that *"Punishment is justifiable as a deterrent not only to the criminal himself, but also, and even more importantly, to those who may have similar criminal propensity. A way must be found to protect society from the activities of these criminals and to me, this way is confinement for a considerable length of time. The Appellant if he is mindful of reforming must do so while in prison."*

This notwithstanding, punishment should not be excessive. See the case of **Apaloo v The Republic [1975] 1 GLR 156** where the Court stated the principle as follows:-

“But the general principle is that a sentence of imprisonment; even though intended specifically as a general deterrence, must not be excessive in relation to the facts of the offence.”

Stealing according to **section 124(1) of Act 29** is a second-degree felony so ordinarily it attracts a custodial sentence of not more than ten (10) years. However, **section 296 (5) of the Criminal and Other Offences Procedure Act 1960 (Act 30)** puts stealing within a special category of offences which attract a custodial sentence of up to 25years. The Attorney for the Republic urged the Court to pass an enhanced sentence since the accused person is a convict. It is however the considered view of the Court that since the earlier conviction of the accused person was on one of the two offences on the same charge sheet, section 300 of Act 30 which provides for enhanced sentences for repeated offences (previous convictions) will not apply in the instant case. In that, the offence of stealing was not committed after he had been convicted of the charge of defrauding by first pretence.

In a bid to address inequities in punishment and to ensure that Courts pass appropriate sentences and similar sentences for similar offences irrespective of the Court passing the sentence, the Ghana Sentencing Guidelines was introduced. The Court will therefore be guided by the above authorities and the sentencing guidelines in passing an appropriate sentence in this case. This Court has considered all relevant aggravating and mitigating factors in the case in order to pass the appropriate sentence.

The Court has considered the circumstances in which the offence was committed (the accused person took advantage of the trust Felicia Korankye reposed in him by sending the items from the United States of America to him to keep in a house he was to rent for her and appropriated the items), the prevalence of the offence of stealing and the level of revulsion by society, the fact that the accused person’s conduct was premeditated, none of the items listed in the charge sheet to have been stolen by the accused person was recovered and the total value of the items stolen (GHC379,525.12.) as aggravating factors. The court also considered as mitigating factors, the two young children of the accused person whose

education is allegedly being affected because of his current incarceration; the fact that he changed his plea to guilty simpliciter thereby saving the court some time though a bit belated as this came after almost two years of trial, but it has still saved the Court some time by not going through a full trial. These mitigating factors are however outweighed by the aggravating factors mentioned above. These factors bring the offence within level 'D' of the Sentencing Guidelines which provides for a sentence of between 5 to 10 years. Having considered all the circumstances of the accused person and the case, the prevalence of the offence of stealing perpetuated by able bodied young men and woman in the society, the need to deter the accused person and others of like mind and disposition, and the law on the appropriate sentence to pass as discussed above, the accused person having dishonestly appropriated the various items worth GHC379,525.12 (this amount represents the cedi equivalent of the items in US Dollar as at January 2022 when the case was filed) sent to him by the said Felicia Korankye for safe keeping thereby depriving the owner of its use and benefit, is hereby sentenced to eight (8) years imprisonment in hard labour (IHL). In passing this sentence the Court also considered the period of time the accused person has been in lawful custody (being two years) though on bail but unable to execute the bail bond.

SGD.

**H/H MATILDA RIBEIRO
CIRCUIT COURT JUDGE**

Counsel:

Zennaira Adum Atta (State Attorney) prosecuting for the Republic

No legal representation for the accused person.
